

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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STEVEN R. DAVIS,

Case No. 2:18-CV-673 JCM (BNW)

ORDER

V.

UNITEL VOICE, LLC d/b/a TELECOM
MANAGEMENT GROUP, INC., et al.,

Defendant(s).

Presently before the court is *pro se* plaintiff Steven Davis's ("Davis") motion for reconsideration. (ECF No. 80). Defendant Somos, Inc. ("Somos") filed a response (ECF No. 82), to which Davis replied (ECF No. 86). Defendant Unitel Voice, LLC d/b/a Telecom Management Group, Inc. ("Unitel")¹ also filed a response (ECF No. 84), to which Davis did not reply.

Also before the court is Davis's motion for reconsideration. (ECF No. 85). Defendant CenturyLink, Inc. ("CenturyLink") filed a response (ECF No. 87), to which Davis replied (ECF No. 88).

Also before the court is Davis's second motion for leave to file second amended complaint. (ECF No. 73). CenturyLink filed a response (ECF No. 75), to which Davis replied (ECF No. 81).

Also before the court is Magistrate Judge Brenda Weksler's order and report and recommendation ("R&R"). (ECF No. 89). Davis objected to the portion of the R&R that recommends denying his motion in part (ECF No. 90), and Somos replied (ECF No. 92). Unitel

¹ As the court will discuss, the identity of this defendant is highly contested.

1 appealed the portion of the order granting Davis's motion in part (ECF No. 91), and Davis
 2 replied (ECF No. 93).

3 **I. Background**

4 Davis initiated the instant action against CenturyLink under the Federal Communications
 5 Act, 47 U.S.C. § 201 *et seq.*, and Federal Communications Commission ("FCC") regulations,
 6 which provide a private right of action against "communication services" that engage in illegal,
 7 unjust, and unreasonable business practices. *See* 47 U.S.C. § 201 *et seq.* (ECF No. 24).

8 Unitel is a certified carrier entity that searches for and reserves vanity toll free numbers
 9 ("VTFNs") for its customers. (ECF No. 24 at 5–6). Beginning in 2014, Davis and Unitel had an
 10 informal agreement whereby Davis paid Unitel to reserve new VTFNs for him. (ECF No. 24 at
 11 5–6). Unitel alleged that "Davis . . . had fallen far in arrears" and demanded payment in
 12 February 2016. (ECF No. 26 at 5) Davis did not pay. (ECF No. 24 at 9). On April 8, 2016,
 13 Unitel notified Davis that it had terminated his account due to his nonpayment. (ECF No. 24 at
 14 10).

15 Upon termination, Unitel released all of Davis's VTFNs to Somos, Inc.—a "SMS/800
 16 Toll Free Number Registry" database—for other parties to acquire. (ECF Nos. 24 at 10). Level
 17 3 Communications, LLC ("Level 3") allegedly acquired numerous VTFNs once belonging to
 18 Davis. (ECF No. 43 at 2). CenturyLink acquired Level 3 Communications, Inc.—which owned
 19 Level 3—in a 2017 corporate merger. (ECF No. 57 at 4).

20 Davis filed this action on April 13, 2018, alleging that Level 3 engaged in illegal, unjust,
 21 and unreasonable practices in violation of the Federal Communications Act, 47 U.S.C. §§ 201, *et*
 22 *seq.*, and FCC regulations, 47 CFR §§ 52.101, *et seq.* (ECF No. 1-1). On July 2, 2018, Davis
 23 filed his first amended complaint, which added CenturyLink as a defendant and dropped Level 3
 24 as a defendant. (ECF No. 24).

25 This court dismissed Unitel, Somos, and CenturyLink for lack of personal jurisdiction.
 26 (ECF Nos. 74; 78). Because the statute of limitations had run as to those defendants while this
 27 case was pending and amendment could not cure the jurisdictional defects of Davis's complaint,
 28 the court dismissed them with prejudice. *Id.* Davis now moves for reconsideration, arguing that

1 the court should have transferred the case to an unspecified district which would have
 2 jurisdiction. (ECF Nos. 80; 85).

3 Davis moved to file a second amended complaint on July 31, 2019. (ECF No. 73). Judge
 4 Weksler granted Davis's motion to the extent that he sought to add Level 3 and Telecom
 5 Management Group, Inc. as defendants. (ECF No. 89 at 11). Judge Weksler recommends that
 6 the court deny Davis's motion to the extent that he seeks to amend his claims against Unitel,
 7 Somos, and CenturyLink and further recommends that the court hold that his second amended
 8 complaint does not relate back to his original complaint. *Id.*

9 **II. Legal Standard**

10 *A. Appeals from a magistrate judge's order*

11 A district judge may affirm, reverse, or modify, in whole or in part, a magistrate judge's
 12 order, as well as remand with instructions. LR IB 3-1(b).

13 Magistrate judges are authorized to resolve pretrial matters subject to the district judge's
 14 review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); *see*
 15 *also* Fed. R. Civ. P. 72(a); LR IB 3-1(a) ("A district judge may reconsider any pretrial matter
 16 referred to a magistrate judge in a civil or criminal case under LR IB 1-3, when it has been
 17 shown the magistrate judge's order is clearly erroneous or contrary to law."). The "clearly
 18 erroneous" standard applies to a magistrate judge's factual findings, whereas the "contrary to
 19 law" standard applies to a magistrate judge's legal conclusions. *See, e.g., Grimes v. Cty. of San*
 20 *Francisco*, 951 F.2d 236, 240 (9th Cir. 1991).

21 A magistrate judge's finding is "clearly erroneous" if the district judge has a "definite and
 22 firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S.
 23 364, 395 (1948). "[R]eview under the 'clearly erroneous' standard is significantly deferential."
 24 *Concrete Pipe & Prod. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602,
 25 623 (1993).

26 "An order is contrary to law when it fails to apply or misapplies relevant statutes, case
 27 law, or rules of procedure." *United States v. Desage*, 2017 WL 77415, at *3, --- F. Supp. 3d ----,
 28 ---- (D. Nev. Jan. 9, 2017) (quotation omitted); *see also Grimes*, 951 F.2d at 241 (finding that

1 under the contrary to law standard, the district judge reviews the magistrate judge's legal
 2 conclusions *de novo*).

3 *B. Objections to a magistrate judge's report and recommendation*

4 A party may file specific written objections to the findings and recommendations of a
 5 United States magistrate judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);
 6 LR IB 3-2. Where a party timely objects to a magistrate judge's report and recommendation, the
 7 court is required to "make a *de novo* determination of those portions of the [report and
 8 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). The court "may accept,
 9 reject, or modify, in whole or in part, the findings or recommendations made by the magistrate."
 10 *Id.* However, "a district court may not reject the factual findings of a magistrate judge on a
 11 motion to suppress without conducting a *de novo* evidentiary hearing." *United States v.*
 12 *Ridgway*, 300 F.3d 1153, 1155 (citing *United States v. Bergera*, 512 F.2d 391, 392–94 (9th Cir.
 13 1975)).

14 Pursuant to Local Rule IB 3-2(a), a party may object to the report and recommendation of
 15 a magistrate judge within fourteen (14) days from the date of service of the findings and
 16 recommendations. Similarly, Local Rule 7-2 provides that a party must file an opposition to a
 17 motion within fourteen (14) days after service thereof.

18 *C. Reconsideration*

19 A motion for reconsideration "should not be granted, absent highly unusual
 20 circumstances." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880
 21 (9th Cir. 2009). "Reconsideration is appropriate if the district court (1) is presented with newly
 22 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or
 23 (3) if there is an intervening change in controlling law." *School Dist. No. 1J v. ACandS, Inc.*, 5
 24 F.3d 1255, 1263 (9th Cir. 1993); *see* Fed. R. Civ. P. 60(b).

25 Rule 59(e) "permits a district court to reconsider and amend a previous order," however
 26 "the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and
 27 conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)
 28 (internal quotations omitted). A motion for reconsideration is also an improper vehicle "to raise

1 arguments or present evidence for the first time when they could reasonably have been raised
 2 earlier in litigation.” *Marlyn Nutraceuticals*, 571 F.3d at 880.

3 **III. Discussion**

4 As an initial matter, the court once again notes that Davis is representing himself *pro se*.
 5 Although “the standard practice of federal courts is to interpret filings by pro se litigants liberally
 6 and to afford greater latitude as a matter of judicial discretion,” *Ricotta v. California*, 4 F. Supp.
 7 2d 961, 986 (S.D. Cal. 1998), this court “lacks the power to act as a party’s lawyer, even for pro
 8 se litigants,” *Bias v. Moynihan*, 508 F.3d 1212, 1219 (9th Cir. 2007).

9 The hazards which beset a layman when he seeks to represent
 10 himself are obvious. He who proceeds pro se with full knowledge
 11 and understanding of the risks does so with no greater rights than a
 12 litigant represented by a lawyer, and the trial court is under no
 obligation to become an “advocate” for or to assist and guide the
 pro se layman through the trial thicket.

13 *Id.* (quoting *Jacobsen v. Filler*, 790 F.2d 1362, 1365 n.5 (9th Cir. 1986)). Thus, the court will not
 14 and cannot act as Davis’s counsel, but the court will interpret Davis’s filings liberally and afford
 15 him greater latitude where appropriate.

16 The court now turns to the first problem raised by Davis’s effort to represent himself.
 17 Although Davis’s briefing, argument, and citation to legal authority in this case have been
 18 impressive, Davis has nonetheless struggled with the complex corporate structure of several
 19 defendants. For instance, Davis himself admits to “misunderstanding of the details of a
 20 corporate merger . . . that only corporate experts would understand.” (ECF No. 57 at 19). That
 21 misunderstanding led Davis to add CenturyLink as a defendant and drop Level 3 from this suit.
 22 (ECF No. 24).

23 Both Davis’s original and first amended complaint in this case name “Unitel Voice, LLC
 24 d/b/a Telecom Management Group, Inc.”—which this court has consistently referred to as
 25 “Unitel”—as a defendant. (See ECF Nos. 1-1; 24). Thus, Judge Weksler granted Davis’s
 26 motion to the extent that he sought to *add* “Telecom Management Group, Inc.” as a purportedly-
 27 new defendant. (ECF No. 89 at 7–11). Judge Weksler concluded that the court should deny
 28

1 Davis's motion to the extent he amends his claims against "Unitel Voice LLC," concluding that
 2 it was the entity dismissed with prejudice from this action. *Id.* at 4.

3 Unitel—which Judge Weksler referred to as "TMGI"—objects to Judge Weksler's order
 4 because it contends that it is, in fact, the entity that "was dismissed from this action with
 5 prejudice on August 2, 2019." (ECF No. 74).

6 Davis argues that he, as "the master of the complaint," has the option of naming which
 7 parties he chooses to sue. (ECF No. 93 at 2 (quoting *Lincoln Property Co. v. Roche*, 546 U.S.
 8 81, 91 (2005)). Davis argues that he chose to sue "Unitel Voice, LLC," *not* "Telecom
 9 Management Group, Inc.," and that, as a result, Judge Weksler's order is correct. *Id.*

10 The court must now resolve the parties' dispute regarding the identity of defendant
 11 "Unitel." Telecom Management Group Inc. has consistently indicated as follows:

12 Telecom Management Group Inc., an Illinois corporation doing
 13 business as Unitel, is the proper name of this defendant in this
 14 action. The allegations within the [c]omplaint—which [d]efendant
 15 does not admit are true—correspond to [d]efendant, and not Unitel
 Voice, LLC, which is a separate and unrelated company that
 [p]laintiff has identified by the same name as [d]efendant's true
 corporate identity.

16 (ECF Nos. 26 at 1 n.1; 39 at 1 n.1; 42 at 1 n.1; 52 at 1 n.1; 53 at 1 n.1; 60 at 1 n.1); (*see also* ECF
 17 Nos. 84; 91). In light of that representation, the instant action has proceeded against Telecom
 18 Management Group Inc. For instance, this court's order dismissing "Unitel" did so on the basis
 19 of Telecom Management Group Inc.'s principal place of business and statute of incorporation.
 20 (See ECF No. 74).

21 Thus, the court concludes that the entity that Judge Weksler referred to as "TMGI" and
 22 the entity the court has referred to as "Unitel" are one-and-the-same. The court, construing
 23 Davis's filings liberally and affording him the appropriate latitude, finds that this determination
 24 is in Davis's best interest.

25 If Davis was, in fact, suing Unitel Voice LLC, then—as Judge Weksler notes in her
 26 R&R—his amended complaint as to Telecom Management Group Inc. does not relate back. As
 27 Davis has consistently noted, the statute of limitations on his claims has run. Therefore,
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1 amending his complaint to allege time-barred claims against Telecom Management Group Inc.
 2 would be futile.

3 This determination is also in Davis's best interest in light of his motions to reconsider,
 4 which the court now turns to. Davis argues that this court's dismissal of Unitel, Somos, and
 5 CenturyLink with prejudice for lack of personal jurisdiction creates a manifest injustice because
 6 the statute of limitations had run as to those defendants. (ECF Nos. 80; 85). Davis argues that
 7 the court should have transferred the case to an unspecified district which would have
 8 jurisdiction. (ECF Nos. 80; 85).

9 The court admittedly did not consider 28 U.S.C. § 1631 when issuing its prior orders.
 10 (ECF Nos. 74; 78). That statute provides as follows:

11 Whenever a civil action is filed in a court . . . and that court finds
 12 that there is a want of jurisdiction, the court shall, if it is in the
 13 interest of justice, transfer such action or appeal to any other such
 14 court . . . in which the action . . . could have been brought at the
 15 time it was filed or noticed, and the action . . . shall proceed as if it
 16 had been filed in or noticed for the court to which it is transferred
 17 on the date upon which it was actually filed in or noticed for the
 18 court from which it is transferred.

19 28 U.S.C. § 1631. Although Davis did not move to transfer this action, “[a] motion to transfer is
 20 unnecessary because of the mandatory cast of section 1631’s instructions.” *Hays v. Postmaster*
 21 *General of United States*, 868 F.2d 328, 331 (9th Cir. 1989) (quoting *Harris v. McCauley (In re*
 22 *McCauley)*, 814 F.2d 1350, 1352 (9th Cir. 1987)) (quotation marks omitted).

23 Accordingly, Davis’s motions for reconsideration are granted in light of 28 U.S.C.
 24 § 1631. (ECF Nos. 80; 85).

25 The court does not and cannot have personal jurisdiction over defendants Unitel, Somos,
 26 or CenturyLink. Thus, the court must consider whether transfer of this action is in the interest of
 27 justice. If Davis’s claims were timely filed in this court, then transfer would be in the interest of
 28 justice. *Cf. Danko v. Director, Office of Workers’ Compensation Programs, U.S. Dep’t of*
Labor, 846 F.2d 366, 369 (6th Cir. 1988).

1 The court finds that, because defendant “Unitel” is Telecom Management Group Inc.,
 2 Davis’s claim against it was timely filed at the initiation of this suit. Accordingly, transfer of
 3 Davis’s claims against Unitel is in the interest of justice.

4 The court finds that Davis’s claim against Somos was timely filed at the initiation of this
 5 suit. Thus, transfer of Davis’s claims against Somos is in the interest of justice.

6 Davis originally filed suit against Level 3, and his claims were timely. (ECF No. 1-1). In
 7 his amended complaint, Davis elected to drop Level 3 from the suit and add CenturyLink as a
 8 defendant. (ECF No. 24). In his second amended complaint, Davis seeks to add Level 3 back to
 9 this action.

10 The court finds that Davis’s first and second amended complaints do not simply
 11 “change[] the party or the naming of the party against whom a claim is asserted.” Fed. R. Civ. P.
 12 15. Instead, both amendments drop one defendant and add another and, as a result, neither relate
 13 back to his original complaint. *See Raynor Bros. v. American Cyanimid Co.*, 695 F.2d 382, 384
 14 (9th Cir. 1982). Indeed, Davis did not seek relation back when filing either amended complaint.
 15 (ECF Nos. 24; 72).

16 Accordingly, Davis’s claims against Level 3 and CenturyLink are time-barred, and
 17 transfer is not in the interest of justice.

18 Finally, the court must decide where to transfer Davis’s surviving claims. Davis does not
 19 provide this court with a district court that would have jurisdiction over this action. (See ECF
 20 Nos. 80; 85). Thus, the court must decide where to transfer this action.

21 Somos is incorporated in New Jersey, so the United States District Court for the District
 22 of New Jersey will have personal jurisdiction over it. Further, the District of New Jersey may
 23 have specific jurisdiction over Unitel because the instant action arises from Unitel’s alleged
 24 release of Davis’s VTFNs to Somos.²

25 Accordingly, Davis’s remaining claims are transferred to the United States District Court
 26 for the District of New Jersey.

27
 28 ² This preliminary determination is not intended to be binding on the District of New
 Jersey. Unitel may raise a motion to dismiss for lack of personal jurisdiction if it decides such
 motion is necessary and appropriate.

1 **IV. Conclusion**

2 In sum, Davis's motion for leave to file a second amended complaint is granted only to
 3 the extent that he may (1) correctly name "Unitel" as "Telecom Management Group Inc. d/b/a
 4 Unitel," and (2) assert his claims against Telecom Management Group Inc. d/b/a Unitel and
 5 Somos. This court grants Davis's motions to reconsider. (ECF Nos. 80; 85).

6 After reconsidering this court's prior order, the court will allow Davis's claims against
 7 Telecom Management Group Inc. d/b/a Unitel—which he erroneously sued as United Voice
 8 LLC d/b/a/ Telecom Management Group Inc.—and Somos to proceed. The court will transfer
 9 those claims to the United States District Court, District of New Jersey.

10 After reconsidering this court's prior order, the court dismisses CenturyLink with
 11 prejudice because Davis's amended complaint is time-barred as to that defendant.

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Davis's motion for
 14 reconsideration (ECF No. 80) be, and the same hereby is, GRANTED.

15 IT IS FURTHER ORDERED that Davis's motion for reconsideration (ECF No. 85) be,
 16 and the same hereby is, GRANTED in part and DENIED in part, consistent with the foregoing.

17 IT IS FURTHER ORDERED that this court's order dismissing Unitel and Somos (ECF
 18 No. 74) be, and the same hereby is, VACATED.

19 IT IS FURTHER ORDERED that this court's order dismissing CenturyLink (ECF No. 78)
 20 be, and the same hereby is, VACATED.

21 IT IS FURTHER ORDERED that CenturyLink's motion to dismiss (ECF No. 43) be, and
 22 the same hereby is, GRANTED.

23 IT IS FURTHER ORDERED that Davis's claims against CenturyLink be, and the same
 24 hereby are, DISMISSED as time barred.

25 IT IS FURTHER ORDERED that Davis's motion for leave to file a second amended
 26 complaint (ECF No. 73) be, and the same hereby is, GRANTED in part and DENIED in part,
 27 consistent with the foregoing.

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1 IT IS FURTHER ORDERED that Magistrate Judge Brenda Weksler's order and R&R
2 (ECF No. 89) be, and the same hereby is, VACATED in light of the foregoing.

3 IT IS FURTHER ORDERED that the matter of *Davis v. Unitel Voice, LCC, et al.*, case
4 number 2:18-cv-00673-JCM-BNW, be, and the same hereby is, TRANSFERRED to the United
5 States District Court for the District of New Jersey.

6 DATED March 4, 2020.

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8 UNITED STATES DISTRICT JUDGE
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